



# RULE-MAKING ORDER

(RCW 34.05.360)

**CR-103** (7/22/01)

**Agency:** Department of Retirement Systems

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

**(1) Date of adoption:** 9/20/04

**(2) Purpose:** To implement Chapter 4, Laws of 2004 (HB 2418), which provides additional benefits for certain Law Enforcement Officers' and Fire fighters' Retirement System members who incur a disability in the line of duty. This rule replaces an existing emergency rule with the same WAC number. This emergency rule varies from the previous emergency rule. DRS has filed notice of its intent to adopt this rule as a permanent rule.

**(3) Citation of existing rules affected by this order:**

Repealed:  
Amended:  
Suspended:

**(4) Statutory authority for adoption:** RCW 41.50.050(5)

Other Authority: RCW 41.26.470

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date).  
Describe any changes other than editing from proposed to adopted version:

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: This law went into effect on June 10, 2004. It provides benefits for members of the law enforcement officers' and fire fighters' retirement system who are totally incapacitated for continued employment by their employer due to a disability incurred in the line of duty. Observing the time requirements of notice and opportunity to comment would be contrary to the interest of eligible law enforcement officers and fire fighters with duty-related disabilities. This rule replaces a previous emergency rule filed as 04-12-035. DRS has filed a CR-102 to adopt the rule permanently.

**(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:**

- Yes      No     If Yes, explain:

**(6) Effective date of rule:**

**Permanent Rules**

- 31 days after filing
- Other (specify) \_\_\_\_\_\*

**Emergency Rules**

- Immediately
- Later (specify) \_\_\_\_\_

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

**CODE REVISER USE ONLY**

Filed with the Code Reviser on

September 21, 2004

**WSR 04-19-105**

Name (Type or Print)  
Maureen Westgard

Signature

Title  
Deputy Director

Date  
9/20/04

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	<u>1</u>	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>1</u>	Amended	_____	Repealed	_____

NEW SECTION

**WAC 415-104-480 LEOFF Plan 2 duty disability benefits.** Members of the law enforcement officers' and fire fighters' retirement system (LEOFF) Plan 2 who incur a disability in the line of duty are entitled to duty disability benefits subject to the requirements in RCW 41.26.470 and this section.

(1) **Who is entitled to duty disability benefits?** Any member of LEOFF Plan 2 who is deemed by the department to have:

- (a) Incurred a disability in the line of duty;
- (b) Been totally incapacitated for continued employment in a LEOFF eligible position;
- (c) Separated from a LEOFF eligible position due to the disability, and who:
  - (i) Has a retirement date on or after January 1, 2001; or
  - (ii) Is eligible under this section to have a retirement date on or after January 1, 2001.

The disability may be physical or mental, and may be caused by injury or occupational disease.

(2) **How is "line of duty" defined?** Line of duty means any action or activity done in conjunction with your employment or your status as a law enforcement officer or fire fighter that is required, obligated, or authorized by law, rule, regulations, or condition of employment or service.

(3) **When are the duty disability provisions effective?** The effective date of the duty disability provisions under RCW 41.26.470 (6) and (7) is June 10, 2004, and applies retroactively to January 1, 2001. In order to qualify for the provisions, you must have separated from your LEOFF-eligible position due to a duty disability with a retirement date on or after January 1, 2001.

(4) **How do I apply for duty disability benefits?** You must submit:

(a) A completed three-part disability retirement application provided by the department.

(i) Part 1: Disability retirement application. You must complete and sign the application. If you are married, your spouse must sign consent of the retirement payment option you choose. You must have your signature(s) notarized.

(ii) Part 2: Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person

licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, naturopathy, podiatry, dentistry, or optometry.

(b) Proof of applying to the Washington state department of labor and industries (L&I) or a self-insurer for workers' compensation benefits under Title 51 RCW and, if L&I or the self-insurer determined eligibility, a copy of the determination;

(c) Additional information that may be requested by the department; and

(d) Any other material you want the department to consider.

(5) **What types of evidence will the department use to determine whether I am entitled to benefits under this section?** The department will consider:

(a) Information and determinations obtained from L&I or a self-insurer;

(b) The documentation you submit;

(c) Facts surrounding your injury or occupational disease;

(d) Your job description;

(e) Your membership records, maintained by the department;

(f) Materials obtained or provided by your employer; and

(g) Any other relevant evidence.

(6) **What would disqualify me for duty disability benefits?** You are not eligible for duty disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;

(b) Your application is incomplete or lacks sufficient documentation to prove your disability was incurred in the line of duty;

(c) Your claim for workers' compensation benefits under Title 51 RCW was denied either because your disability was not incurred in the course of employment or because your condition was not recognized as a disability;

(d) The disability occurred as a result of intentional misconduct;

(e) An action was taken by you intentionally to bring about your own disability;

(f) Your mental or physical faculties were impaired due to voluntary intoxication as defined in subsection (17) of this section; or

(g) You were performing your duties in a grossly negligent manner at the time the disability occurred.

(7) **Who decides if I meet the requirements for benefits under this section?** The LEOFF plan administrator.

(8) **May I petition a decision made by the LEOFF plan administrator?** Yes. If the LEOFF plan administrator denies your request for a disability benefit or determines your

disability was not incurred in the line of duty, you may petition for review under chapter 415-04 WAC.

(9) **What are the duty disability retirement benefits?** As a duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent; or

(b) A monthly benefit equal to (b)(i) or (ii) of this subsection, whichever provides the greater benefit:

(i) A minimum monthly benefit equal to ten percent of your final average salary (FAS), which is nontaxable; or

(ii) A monthly benefit of two percent of your FAS for each year of service, adjusted for early retirement if you are under age fifty-three and any survivor option chosen. A portion of your benefit, equal to ten percent of your FAS, is nontaxable.

**Example:** Tom incurs a duty disability at age 42 after twenty years of service. His final average salary is \$5000 per month. Tom's wife is also age 42, and he chooses survivor Option Two per WAC 415-104-215 (2)(b).

Tom's duty disability benefit, calculated at 10 percent of his final average salary (FAS), would be:

Allowance	$\$5000 \times 10\% =$	\$500
Benefit with survivor Option Two	$\$500 \times 0.87 =$	\$435 (nontaxable)

would Tom's duty disability benefit using standard computation be:

Allowance	$2\% \times \text{AFS}$ $(\$5000) \times 20$ years =	\$2000
Benefit after reduction for early retirement	$\$2000 \times 0.39$ (early retirement factor) =	\$780
Benefit with survivor Option Two	$\$780 \times 0.87 =$	\$678.60 (\$435 of this amount is nontaxable)

Tom will receive a monthly benefit of \$678.60 because that is the greater benefit.

(10) **Are my duty disability benefits taxable?** The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, part of your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

It is important that you realize that the department does

not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

**(11) If I retired on or after January 1, 2001, may I apply for duty disability benefits?** If you separated employment due to disability and retired with a service or nonduty disability retirement date on or after January 1, 2001, you may apply to the department for duty disability benefits according to the provisions of subsection (4) of this section.

**(12) If I separated from employment, may I apply for duty disability benefits?** If you separated from employment due to a disability and qualify for a retirement date on or after January 1, 2001, you may apply for duty disability benefits according to the provisions of subsection (4) of this section. If the LEOFF administrator determines you are entitled to duty disability benefits, you will receive a monthly benefit calculated as provided in subsection (9)(b) of this section. However, if you withdrew your contributions, you must repay the entire amount you withdrew. You may repay the withdrawn amount:

(a) By returning the entire amount you withdrew to the department; or

(b) By an actuarial reduction in your monthly benefit.

**Example:** John was injured on the job and separated from his LEOFF position in March 2002. At the time he separated, he was 43 years old, had 10 years of service, and his final average salary was \$5,000.00 per month. At that time, John chose to withdraw \$75,000, which equaled 150 percent of his retirement contributions.

John subsequently applied under the provisions of RCW 41.26.470 (6) and (7) and was deemed eligible for duty disability benefits.

The department calculated John's benefit according to the methods in subsection (9) of this section and determined it was to John's advantage to take the minimum monthly benefit.

If John chooses to repay the entire amount he withdrew, his monthly duty disability benefit will be:

Minimum monthly benefit	10% X AFS (\$5000) =	\$500
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If John chooses to repay the withdrawn amount by having his monthly benefit actuarially reduced, his benefit will be:

Minimum monthly benefit	10% X AFS (\$5000) =	\$500
Reduction to repay the withdrawn amount (\$75,000)	\$75,000 X .0049904 (annuity factor, which is based on the retiree's age) =	-\$374.28
Monthly benefit		\$125.72

(13) **When does a duty disability retirement benefit end?**  
Your duty disability benefit will cease if:

- (a) You return to work in a LEOFF-eligible position; or
- (b) Medical examination reveals that you have recovered from the incapacitating disability and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

(14) **If I retire for a duty disability and die, will my survivor receive a monthly benefit?** If you elect a survivor option under WAC 415-104-215(2) at the time of retirement, your survivor will receive a monthly benefit after your death.

(15) **What happens if I return to a LEOFF-eligible position?** If you recover from your disability and return to a LEOFF-eligible position, your monthly retirement benefit will stop.

(16) **If I return to a LEOFF-eligible position, how will my future retirement benefit be affected?** When you reretire, your monthly benefit will be calculated pursuant to RCW 41.26.500 using any additional service credit and your highest sixty consecutive months of salary, but will be reduced if:

- (a) You were receiving a monthly benefit equal to ten percent of your FAS; or
- (b) You were receiving a monthly benefit calculated under the normal two percent rule but had an early retirement factor applied; or
- (c) You received the one-time lump sum payment equal to one hundred fifty percent of your contributions, unless you repay the amount you received.

(17) As used in this section, intoxication means a disturbance of mental or physical faculties resulting from the introduction of alcohol into the body as evidenced by:

- (a) A blood alcohol level of .20 per centum or greater;
- (b) A blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to his/her injury; or

Resulting from drugs or other substances in the body.